

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-344

May 20, 1998

NEW ENGLAND TELEPHONE AND TELEGRAPH
COMPANY D/B/A BELL ATLANTIC-MAINE
Resale Agreement with NuStar
Communications Corporation

ORDER APPROVING
RESALE AGREEMENT

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, we approve a resale agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine (Bell Atlantic) and NuStar Communications Corporation (NuStar), pursuant to section 252 of the Telecommunications Act of 1996.

On May 5, 1998, Bell Atlantic filed a negotiated Resale Service Agreement with NuStar (including, as Attachment A, a document containing terms and conditions), pursuant to 47 U.S.C. § 252 enacted by the Telecommunications Act of 1996. An agreement reached pursuant to that provision may allow a telecommunications carrier to purchase unbundled network elements, or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC).

NuStar will pay to Bell Atlantic the discounted prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Bell Atlantic does not represent that the prices contained in the Agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in a May 7, 1998 Notice of Agreement and Opportunity to Comment.

We cannot make either of the findings set in section 252(e)(2) for rejection, and we therefore approve the agreement.

We qualify that approval in two respects, however, and reserve findings on future potential issues.

First, we reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Bell Atlantic's retail ratepayers. Bell Atlantic is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Bell Atlantic bears the risk of lost revenues resulting from rates that are too low. However, at the end of the initial 5-year period of the AFOR, and in 2005 if the present AFOR is renewed, we may have occasion to review Bell Atlantic's earnings. We do not resolve whether Bell Atlantic is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to NuStar pursuant to 47 U.S.C. § 252(i) and, if they are not reasonable, whether we should impute revenues to Bell Atlantic.

Second, section 271(c) of the Act, 47 U.S.C. § 271(c), requires that the Bell Operating Companies (BOCs) meet certain requirements before they are allowed to provide interLATA service (the so-called "competitive checklist"). Under section 271(d)(3), the Federal Communications Commission (FCC) must determine whether the BOC has met the competitive checklist before granting the BOC authority to provide interLATA service within its region. Prior to making that determination, the FCC must consult with state commissions "in order to verify the compliance of the BOC with the checklist." Our approval of this Agreement should not be construed as a finding that Bell Atlantic has met those requirements.

The agreement filed by Bell Atlantic provides for resale of Bell Atlantic's services in Maine by NuStar. If NuStar seeks to interconnect with networks maintained by independent local exchange carriers in Maine, or to resell services offered by those carriers, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. 251(f)(1)(A).

35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service. 35-A M.R.S.A. § 304 requires that a utility must file rate schedules and terms and conditions prior to providing a service. The terms and conditions shall specify the areas in which the utility will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier exchanges rather than by municipalities.

ORDERING PARAGRAPHS

Accordingly, we

1. Approve the Interim Resale Service Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine and NuStar Communications Corporation, attached hereto, pursuant to 47 U.S.C. § 252(e);

2. Order that NuStar Communications Corporation shall not provide local exchange telephone service until the Commission grants authority to NuStar Communications Corporation to provide such service and until the Commission approves schedules of rates, terms and conditions for the provision of such service; and

3. Order that the Administrative Director shall make a copy of the attached Agreement available for public inspection and copying pursuant to 47 C.F.R. § 252(h) within 10 days of the date of this Order.

Dated at Augusta, Maine, this 20th day of May, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

COMMISSIONER ABSENT Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission to the Maine Supreme Judicial Court, sitting as the Law Court, is not available, as provided in 47 U.S.C. § 252(e)(6).
3. Review of this discussion is available to an aggrieved party by bringing an action in federal district court, as provided in 47 U.S.C. § 252(e)(6).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.